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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re J.P. et al., Persons Coming Under the
Juvenile Court Law.

B266648
(Los Angeles County
Super. Ct. No. DK09646)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ADRIENNE G. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County. Debra
L. Losnick, Commissioner. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and
Appellant Adrienne G.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant
and Appellant Tyron J.

Jennifer L. King, under appointment by the Court of Appeal, for J.P.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County
Counsel, and Tyson B. Nelson, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

The juvenile court asserted jurisdiction over four of Adrienne G.’s (mother’s) children. The court asserted delinquency jurisdiction over now 17-year-old J., and asserted dependency jurisdiction over his younger half siblings, Javon, Ta. and Te. because mother failed to protect Ta. and Te. from being sexually molested by J. Mother appeals, arguing that the juvenile court erred in asserting dependency jurisdiction and in removing Javon, Ta. and Te. from her. Ta. and Te.’s father, Tyron J. (Tyron) appeals, arguing that he should not have been ordered to complete sexual abuse awareness classes. J. files a letter brief, arguing that the juvenile court does not have jurisdiction over him. And the Los Angeles County Department of Children and Family Services (Department) cross-appeals, arguing that the juvenile court erred in dismissing Tyron from the failure-to-protect counts and in dismissing a separate count involving J. Many of these claims are moot in light of the juvenile court’s termination of dependency jurisdiction over Ta. and Te. and its order returning Javon to mother’s custody. The remaining claims are without merit. We accordingly affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Mother has four children at issue in this appeal—J. (born 1999), Javon (born 2001), Ta. (born 2006), and Te. (born 2009).¹ Tyron is Ta.’s and Te.’s father.²

In 2007, mother and father lived together in Chicago with J., Javon and Ta. That year, mother caught J. and Ta. together in J.’s bed, naked. J. was “freaking on [Ta.]” Mother got mad and “whooped” J. As soon as Tyron found out, he and Ta. moved away. In 2009, Te. was born. In 2010, Father moved to California with Ta. and Te.

In November 2014, mother, J. and Javon moved to California and moved in with Tyron, Ta. and Te. Within days, J. began sexually assaulting his half sisters. With then-five-year-old Te., J. put his tongue in her mouth, “humped” her vagina and buttocks

¹ Mother has two other children who are not parties to this proceeding.

² Tyron has one other child who is not a party to this proceeding. The fathers of J. and Javon are also not parties to this proceeding.

while she was clothed, took off her pants, and rubbed his erect penis until she saw “water” coming out of his penis. With then-eight-year-old Ta., J. kissed her, pulled down her pants, touched her vagina, and rubbed his erect penis on her clothed body. J. said he “want[ed] to sex everyone up.”

In late January 2015, the girls told Tyron what J. had been doing to them. Tyron told mother that she had to move out and take the boys with her, but gave mother time to find another place to live. On February 9, 2015, the girls told Tyron that J. had touched his penis to Te.’s unclothed “privates.” Upon hearing this, father immediately reported the abuse to the police.

II. Procedural History

A. Preappeal

The Department filed a petition asking the juvenile court to assert dependency jurisdiction over all four children on four grounds: (1) J. sexually abused Te., and mother and Tyron failed to protect her and her siblings, Javon and Ta. (Welf. & Inst. Code, § 300, subds. (b) & (d))³; (2) J. sexually abused Ta., and mother and Tyron failed to protect her and her siblings, Javon and Te. (*ibid.*); (3) Mother, as J.’s mother, “established a detrimental and endangering situation for the child” because she was “aware” of J.’s abuse of his half sisters and “failed to take steps to prevent the child’s continued sexual abuse” of his half sisters (§ 300, subd. (b)); and (4) J.’s abuse of each child placed the other siblings at risk of harm and abuse (§ 300, subd. (j)).

The juvenile court exerted dependency jurisdiction over Javon, Ta. and Te. Specifically, the court sustained the first, second and fourth grounds for jurisdiction alleged in the Department’s petition on the basis of mother’s failure to protect. The court found that mother was aware of the 2007 incident, that she should have been “hypersensitive . . . to what was happening in her household,” and that she “did not do enough . . . to protect the girls” when Tyron informed her of the abuse in January 2015.

³ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

The court did not sustain jurisdiction on the basis of Tyron’s failure to protect, finding that he “did what he could [in 2007] by leaving and extricating himself and his child [Ta.,] whereas the mother did not.” The court dismissed the third allegation entirely.

The court declined at that time to dismiss J. from the dependency petition. By that time, J. had been convicted in juvenile delinquency court of two counts of committing lewd acts upon a child under the age of 14, in violation of Penal Code section 288, subdivision (a). The juvenile dependency judge asked the probation department to prepare a report, pursuant to section 241.1, to assist the court in deciding which juvenile court—dependency or delinquency—should have jurisdiction over J..

The court ordered all four children removed from mother, placed Javon in foster care, and placed the girls with Tyron. For mother, the court ordered reunification services for J. and Javon and enhancement services for Ta. and Te. For father, the court ordered him to complete individual counseling to address sexual abuse awareness.

Mother and Tyron filed timely appeals. J. filed a letter brief. The Department filed a cross-appeal.

B. Postappeal

While this appeal was pending, the juvenile court (1) terminated dependency jurisdiction over Ta. and Te., granting Tyron sole physical custody and both parents joint legal custody, and (2) ordered Javon returned to mother and set a hearing date for terminating dependency jurisdiction over him. We may take judicial notice of these developments as they bear on our ability to grant effective relief. (Evid. Code, §§ 452, subd. (c) & 459; *In re F.S.* (2016) 243 Cal.App.4th 799, 807-808, fn. 6.)

DISCUSSION

I. Jurisdiction

The parties raise several challenges to the juvenile court's assertion or failure to assert dependency jurisdiction. Mother challenges the sufficiency of the evidence underlying the first, second and fourth grounds for asserting dependency jurisdiction. J. challenges the juvenile court's refusal to dismiss him because he was the aggressor, not a victim. The Department, in its cross-appeal, challenges the court's dismissal of Tyron from the petition and its dismissal of the third ground for jurisdiction.

In reviewing a juvenile court's findings *asserting* dependency jurisdiction, we are tasked with assessing whether "substantial evidence, contradicted or uncontradicted, supports" those findings. (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*In re I.J.*)). In so doing, we consider the record as a whole, and resolve all conflicts and draw all reasonable inferences to support the juvenile court's findings; we may not reweigh the evidence. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 103.) As long as substantial evidence supports a finding, an order asserting dependency jurisdiction must be affirmed. In reviewing a juvenile court's findings *declining* dependency jurisdiction, we ask whether there was "evidence [of abuse or neglect] no reasonable trier of fact could have rejected"; absent such "indisputable evidence of abuse," an order declining to exert dependency jurisdiction must be affirmed. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200 (*In re Sheila B.*); *In re Roberto C.* (2012) 209 Cal.App.4th 1241, 1254.)

The Department's petition in this case rested on three statutory grounds for exerting dependency jurisdiction. The first is section 300, subdivision (b). That subdivision empowers a juvenile court to assert dependency jurisdiction if a child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of [the parent] to adequately supervise or protect the child." (§ 300, subd. (b)(1).) The second is section 300, subdivision (d). That subdivision empowers a juvenile court to assert jurisdiction if a parent "failed to adequately protect the child from sexual abuse when the parent . . . knew or reasonably

should have known that the child was in danger of sexual abuse.” (§ 300, subd. (d).) The third is section 300, subdivision (j). That subdivision empowers a juvenile court to assert jurisdiction over a child when his or her sibling has been abused or neglected, and there is a substantial risk that the child will also be abused or neglected. (§ 300, subd. (j).)

A. Mother’s challenges

Mother challenges the juvenile court’s assertion of jurisdiction over Javon, Ta. and Te. on the grounds that she failed to protect them pursuant to section 300, subdivisions (b), (d), and (j).

Mother’s challenge as to Ta. and Te. is moot. The juvenile court terminated its dependency jurisdiction over the girls, so we can no longer grant mother any effective relief on appeal. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405, 413-414.)

Mother’s challenge as to Javon is without merit because substantial evidence supports the juvenile court’s finding that mother failed to protect Ta. and Te. from J.. Mother knew that J. had been “freaking on” Ta. in 2007, while both of them were naked and in bed. She administered a “whooping” to J., but did not take J. to any counseling or other treatment for his behavior. Mother then moved J. in with Ta. and Te. in November 2014, but made no special effort to watch J. despite knowing of his prior sexual conduct with Ta. And in early January 2015, when mother learned that J. had sexually assaulted Ta. and Te., mother took no action to stop further abuse or did not immediately move herself and J. out of the house. This evidence supports the juvenile court’s finding that mother failed to “adequately . . . protect” the girls under subdivision (b), that she “failed to adequately protect” them “from sexual abuse” when mother “knew or reasonably should have known that” the girls were “in danger of sexual abuse” under subdivision (d), and that this neglect as to Ta. and Te. put Javon at “substantial risk” of abuse or neglect under subdivision (j).

Mother raises five arguments in response.

First, she asserts that she was not neglectful because she did not subjectively learn of any sexual abuse until February 9, 2015, the day Tyron reported the abuse to the

police. This assertion is flatly contradicted by mother's own admission that she saw J. and Ta. in bed, naked, in 2007; by Javon's statement that mother saw J. and Ta. together in 2007; and by Tyron's statement that he told mother about the abuse in late January 2015 and gave her time to move out. The evidence is conflicting, and the juvenile court was entitled to credit one version of the facts over another; we cannot gainsay that determination on appeal. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

Second, mother contends that J.'s conduct in 2007 consisted of "touching alone" and that such "innocent childhood sexual exploration" should not be deemed to put her on notice that J. might (again) engage in sexual abuse. We disagree. Seeing an eight-year-old "freaking on" a one-year-old child, while both are completely naked, is neither "touching alone" nor "innocent childhood sexual exploration." Indeed, mother's decision to "whoop[]" J. indicates that she also viewed J.'s conduct as being quite serious. If there were any doubt, we are in any event required to draw all reasonable inferences in favor of the juvenile court's findings, and it is reasonable to infer that the conduct mother observed in 2007 might elevate the risk of similar or greater incidents of sexual abuse in the future.

Third, mother argues that the juvenile court's findings holding her responsible for failing to protect the children cannot be squared with its dismissal of Tyron because, in her view, both she and Tyron were equally culpable. The juvenile court took a different view of their relative culpability, and substantial evidence supports the distinction it drew. Mother witnessed J.'s sexual assault of Ta. in 2007, but her sole reaction was to "whoop[]" him; she did not seek any counseling or other treatment for him. Instead, she moved him in with Ta. and Te. seven years later, did not closely supervise him, and did not immediately move out upon learning of further sexual abuse. By contrast, Tyron moved away in 2007 upon learning of J.'s conduct and delayed in reporting the 2014 abuse only to give mother time to move out; he nevertheless called the police once J. began directly touching the girls' sexual organs to his own. Neither parent is free of

fault, but substantial evidence supports the finding that Tyron was less at fault than mother.

Fourth, mother posits that this case is just like *In re M.W.* (2015) 238 Cal.App.4th 1444. There, the court held that a mother's knowledge that father had once slapped a woman as part of a domestic violence incident did not put her on notice that father might have had an extensive criminal history, or that his criminal history placed her children at risk of sexual assault. (*Id.* at pp. 1446, 1456.) Here, by contrast, mother witnessed J.'s sexual conduct with Ta. in 2007, knew that he had not received any counseling or other treatment, and intentionally put him under the same roof as Ta. and her younger sister without close supervision, enabling J. to commit further acts of sexual abuse.

Finally, mother argues that the Department was obligated to prove that she was subjectively aware of the danger J. might sexually abuse his half sisters. She is wrong. Section 300, subdivision (d), is one of the grounds for jurisdiction, and it provides for jurisdiction when a parent "knew or *reasonably should have known* that the child was in danger of sexual abuse." (§ 300, subd. (d), italics added.) Actual knowledge is not required. Mother resists this conclusion, citing *In re Rubisela E.* (2000) 85 Cal.App.4th 177, *In re Maria R.* (2010) 185 Cal.App.4th 48, and *In re S.C.* (2006) 138 Cal.App.4th 396. The first two cases have been overruled by our Supreme Court on this very point. (*In re I.J.*, *supra*, 56 Cal.4th at pp. 780-781.) And although the parent in *In re S.C.* was subjectively aware of the risk that leaving her child with the child's stepfather might create a risk of abuse in light of prior abuse between the child and stepfather, the court did not purport to announce a rule that subjective awareness of the risk is *always* required. (*In re S.C.*, at p. 415.)

B. J.'s challenge

J. argues in a letter brief that the juvenile court should have dismissed dependency jurisdiction over him because he was the aggressor, not a victim. He is wrong. A juvenile court may assert jurisdiction over a child in one of two ways: (1) it may assert *delinquency* jurisdiction over a child who is accused of a crime, truancy or disobedience

(§§ 601 & 602); or (2) it may assert *dependency* jurisdiction over a child who is the victim of cruelty, abuse, neglect or depravity (§ 300). (See generally *In re Donald S.* (1988) 206 Cal.App.3d 134, 137.) In most cases, the juvenile court cannot assert *both* types of jurisdiction over a child and must instead pick one after evaluating a panoply of factors bearing on what type of juvenile court supervision will better serve the best interest of the child. (§ 241.1, subds. (a) & (e); *In re M.V.* (2014) 225 Cal.App.4th 1495, 1505-1506; *In re Joey G.* (2012) 206 Cal.App.4th 343, 347; *In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1012-1013.) The juvenile court has asserted both delinquency and dependency jurisdiction over J., and the juvenile dependency court in this case ordered a report to determine which basis for jurisdiction would best serve J.’s needs. This is the appropriate procedure under section 241.1, and enables the court to determine whether to place him under delinquency jurisdiction, under dependency jurisdiction or under both. Temporarily leaving J. subject to dependency jurisdiction pending this determination is therefore appropriate.

C. Department’s challenges

In its cross-appeal, the Department raises two challenges to the juvenile court’s jurisdictional rulings.

First, the Department asserts that the juvenile court erred in dismissing Tyron from the failure to protect counts, while holding mother responsible. As we discussed above, substantial evidence supports the distinction between the parents. More to the point, Tyron’s conduct does not amount to “indisputable evidence of abuse.” (*In re Sheila B.*, *supra*, 19 Cal.App.4th at p. 200.)

Second, the Department argues that the court erred in dismissing the third ground for jurisdiction alleged in its petition. That ground alleged that mother had “established a detrimental and endangering situation for the child” because she was “aware” of J.’s abuse of his half sisters and “failed to take steps to prevent the child’s continued sexual abuse” of his half sisters. On its face, this allegation is ambiguous. To the extent the “child” it refers to is J., the Department is alleging that mother created a “detrimental and

endangering” home environment for *J.*, which led to *J.*’s continued abuse of the girls. But this allegation invokes section 300, subdivision (b), which requires proof of “serious physical harm or illness” or a “substantial risk” of such. Because *J.* is not at risk of such harm (his victims are), reading the allegation in this manner does not state a claim under section 300, subdivision (b), and the allegation was properly dismissed for its failure to do so. To the extent the “child” it refers to is either Ta. or Te., the allegation is nonsensical because it faults mother for failing to “prevent [the girls’] continued sexual abuse” of themselves. In its brief, the Department clarifies that the gist of this allegation is that “neglectful conduct by mother caused the girls to be continually sexually abused by [J.]” But that is not what the allegation says, and the juvenile court properly dismissed the allegation based on its actual language.

II. Dispositional Orders

The parties also raise challenges to the juvenile court’s dispositional orders. Mother argues that the court erred in removing Javon, Ta. and Te. from her, and in offering enhancement services rather than reunification services as to Ta. and Te. as part of its continuing jurisdiction over the girls. Tyron argues that the court erred in requiring him to attend sexual abuse awareness counseling.

A. Mother’s challenges

Mother’s challenges to the dispositional order are moot. The juvenile court terminated jurisdiction over Ta. and Te. and placed them with Tyron, with whom they were residing before the Department filed its petition. The court also placed Javon back with mother. As a result, mother’s challenges to the court’s removal order and the services it ordered while it had jurisdiction over the girls are moot.

B. Tyron’s challenge

Tyron’s challenge to the order requiring him to participate in sexual abuse awareness counseling lacks merit. A juvenile court may subject a nonoffending parent such as Tyron to any “reasonable” order that is “appropriate and in the child[ren’s] best interest” and that is designed to “eliminate [the] conditions that led to the court’s finding”

of jurisdiction. (§ 362, subd. (d); see *In re Nolan W.* (2009) 45 Cal.4th 1217, 1229.) Permissible orders include “participat[ion] in a counseling or education program.” (§ 362, subd. (d).) We review the juvenile court’s findings in support of a particular order for substantial evidence (*In re T.V.* (2013) 217 Cal.App.4th 126, 136), and its decision of which orders to impose for an abuse of discretion (*In re Drake M.* (2012) 211 Cal.App.4th 754, 770 (*In re Drake M.*)).

In this case, J. was sexually abusing Ta. and Te. for a month while living under the same roof as Tyron. Tyron only found out about the abuse when the girls told him about it. Although the juvenile court concluded that Tyron was not sufficiently culpable that he should be deemed an offending parent who failed to protect the girls, it remains true that if Tyron had been more attentive or observant, he may have prevented or cut short the sexual abuse. On these facts, an order requiring Tyron to participate in sexual abuse awareness counseling is “appropriate,” in the children’s “best interest,” and aimed at “eliminat[ing] [the] conditions that led to the court’s finding” of jurisdiction.

Tyron contends that three cases point to a different result. The first two cases he cites—*In re Basilio T.* (1992) 4 Cal.App.4th 155, 172-173 and *In re Drake M.*, *supra*, 211 Cal.App.4th 754, 757-758, 770-771—held that an order requiring substance abuse counseling was invalid where there was no evidence of substance abuse. The third case he cites, *In re Jasmin C.* (2003) 106 Cal.App.4th 177, 181-182, held that an order for parenting classes was invalid because there was no finding as to its necessity beyond the “rote assumption that mother could not be an effective single parent without parenting classes.” In this case, there is a substantial basis in the record, factually and logically, for requiring Tyron to attend sexual abuse awareness classes.

DISPOSITION

The orders of the juvenile court are affirmed.

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_____, J.

HOFFSTADT

We concur:

_____, Acting P. J.

ASHMANN-GERST

_____, J.

CHAVEZ